IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.61 OF 2007
ALONG WITH
CRIMINAL WRIT PETITION NO.331 OF 2007

Deepak Khimji Chheda ...Petitioner.

Versus

Laxmichand Jakubhai Vira
and Anr. ...Respondents.

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Mr.Holambe Patil, Sr.Advocate, for the Petitioner.
Mr.D.H.Mehta i/b. P.N.Vira, Adv. for Respondent No.1.
Mr.A.S.Shitole, APP, for State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : 12th March, 2007.

P.C.:

1. Heard the learned Advocate for the petitioner-orig.accused, the learned Advocate for respondent No.1-orig.complainant and the learned APP for the State.

2. The petitioner has been convicted under Section 138 of N.I.Act in C.C.No.570/S/2003 by the learned M.M., 13th Court, Dadar, Mumbai by judgment and order dated 29.07.2006. By the said

judgment and order the petitioner has been sentenced to suffer S.I. for six months and fine of Rs.5,000/-. He was further directed to pay the respondent No.1-orig.complainant compensation of Rs.11,34,875/-.

3. Being aggrieved by the said judgment and order the petitioner preferred an appeal before the Sessions Court. At the time of admission, respondent No.1-orig.complainant preferred an application that the appellant should deposit the entire amount of compensation before the Appeal is heard on merits. By order dated 20.12.2006, the said application came to be partly allowed and the petitioner came to be directed to deposit 50% of the compensation amount within one month. However thereafter as the petitioner failed to deposit 50% of the compensation amount within one month, the learned Sessions Judge on account of non-compliance of order dated 20.12.2006 dismissed the Appeal by order dated 2.2.2007.

4. Being aggrieved by order dated 20.12.2006 Writ Petition No.61 of 2007 has been preferred; and being aggrieved by the order dated 2.2.2007

Writ Petition No.331 of 2007 has been preferred before this Court.

5. The learned Advocate for the petitioner has submitted that there was a civil suit between the parties which was decreed in favour of the respondent. He has submitted that it pertains to very same transaction, hence now the petitioner cannot be called upon to deposit 50% of the amount of compensation. In support of his contention, he has placed reliance on Section 357(5) of Cr.P.C..

6. On the other hand the learned Advocate for respondent No.1-orig.complainant has pointed out that Section 357(5) Cr.P.C. speaks about the Court taking into account any sum paid or recovered as compensation. In the present matter nothing has yet been paid or recovered from the accused by the complainant. Hence this sub-section would not apply to the present case. It is an admitted fact that pursuant to the civil suit nothing has been recovered from the present petitioner by the respondent. Hence this section would be of no help to the petitioner.

7. In cases of this nature, the Supreme Court in various decisions including the decision in the case of **Stanny Felix Pinto Vs. Jangid Builders Pvt. Ltd., 2001(1) ALL MR 852 (S.C.)** observed that direction to deposit part of the compensation amount for suspending the order for payment of whole amount of compensation and hearing appeal was justified. Reliance is also placed on the decision of this Court in the case of **Maheshwar Dattatraya Kale Vs. Capt. Atul Wasudeo Divekar & Anr., 2006 ALL MR (Cri.) 544**.

8. In view of the above decisions, it is well settled that in Appeal the accused can be called upon to deposit the compensation amount. However, the learned Advocate for the petitioner states that the petitioner is able to deposit about 25% of the compensation amount only.

9. In view of this statement, the petitioner is directed to deposit an amount of Rs.3,00,000/- (Rupees three lakhs only) within 15 days with the Sessions Court. The said amount to be deposited within 15 days from today. On the petitioner depositing the said amount the Appeal which has

been dismissed by the Sessions Court shall stand restored to file and it shall be disposed of on merits. In case the petitioner fails to deposit the said amount of Rs.3,00,000/- within 15 days from today, the order of the Sessions Court dated 2.2.2007 shall stand confirmed.

10. Writ Petitions are disposed of accordingly.

(SMT.V.K.TAHILRAMANI,J.)